

EXHIBIT K

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020 (MG)

Debtors.

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VIDEOTAPE DEPOSITION OF JAMES WHITLINGER

New York, New York

November 15, 2012

9:39 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27649

1 JAMES WHITLINGER

2 has had plenty of experience around this
3 discussion with our advisors, with our
4 accounting policy teams and in-house
5 counsel.

6 Q. When you say on a timing
7 perspective you agree that the board had
8 only about 22 minutes to consider this
9 before the board meeting started, right?

10 A. Yeah. That's what the timing of
11 the e-mail stated.

12 Q. And what's your understanding
13 generally of the chart attached to the
14 e-mail that's entitled 2004-2007 PLS R&W
15 analysis?

16 MR. RAINS: I'm going to have
17 to -- I apologize I'm going to stand
18 over your shoulder and look at the
19 document. We weren't given copies so
20 I'm sorry to interrupt but this is the
21 only way I can see it.

22 A. So this schedule shows the
23 ResCap issued deals and the original with
24 principal balance of the loans. And so
25 that was about \$226 billion. The current

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balance of the unpaid principal balance was \$63.3 billion. It shows a percentage of loans that were delinquent and then it showed that we had had just under \$30 billion of -- of losses that were incurred on the original \$226 billion of principal. And that, you know, we believed that \$14.2 billion would be losses that would potentially be incurred in the future from this point in time. So the total lifetime losses were going to be, you know, \$44.1 billion. And essentially that equated to a 19.5 percent lifetime loss of the \$226 billion.

The next column over is, you know, Kathy Patrick's group and it showed what portion of the original 226 billion for all the same -- same buckets. And then it just has a percentage of total issued. So this is what the schedule was, that the ResCap settlement amount of \$8.7 billion was the dollar amount that -- that would agreed to be the claim on the potential losses of \$44.1 billion.

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2 Q. What's your understanding of the
3 items in the rows that refer to a ResCap,
4 Lehman and Bank of America percentage
5 defect rate?

6 A. Right. So the \$8.7 billion
7 divided by \$44 billion I believe is the
8 agreed rate of, you know, 19.7. And the
9 Lehman claim amount in the BofA baseline I
10 think were data points or observations
11 that said that potentially those were
12 rates that were in those specific deals.

13 Q. What are those specific deals?

14 A. You know, I don't -- I don't
15 know their deals.

16 Q. Do you know who provided the
17 35 percent and 36 percent, as you called
18 them, data points for this chart?

19 A. I'm not sure. I believe that
20 Jeff Cancelliere may have helped provide
21 information on this.

22 Q. Who is Jeff Cancelliere?

23 A. Jeff Cancelliere is a direct
24 report of mine today. Jeff worked on the
25 risk team and was our number cruncher,

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2 number expert for valuing loans. And so,
3 you know, the 226 billion, identifying
4 those, identifying the current balance,
5 cumulative losses that had occurred to
6 date, you know, what projected losses
7 could be, he would be our person that was
8 the numbers expert on that.

9 Q. And was Mr. Cancelliere your
10 direct report on May 9, 2012?

11 A. Somewhere in the month of, you
12 know, somewhere in thereabouts, you know,
13 Jeff was reappointed to -- to be a direct
14 report of mine.

15 Q. And on and after the time that
16 he was appointed as a direct report of
17 yours you were responsible for supervising
18 and overseeing an ensuring the accuracy of
19 his work?

20 A. Can you repeat or rephrase that?

21 Q. Sure. Once he be- -- once he
22 was appointed as a direct report of yours
23 you were then responsible for supervising
24 and ensuring the accuracy of his work?

25 A. Yes.

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2 Q. And who appointed him as a
3 direct report of you?

4 A. You know, I was obviously party
5 to that conversation and Tom Marano.

6 Q. Had Mr. -- Mr. Cancelliere
7 before he was a direct report to you, was
8 he a direct report to someone who was
9 employed by AFI?

10 A. Yes. There was dotted line
11 relationships.

12 Q. And so Mr. Marano then decided
13 that Mr. Cancelliere would no longer
14 report to somebody at AFI but would now
15 report to you, correct?

16 A. Generally speaking, you know, we
17 were separating the centers of excellence
18 that had been created over time. We had
19 shared services. And so we -- there was
20 an alignment process going on in April,
21 May, maybe sooner, I don't remember the
22 exact timelines, where we made sure that
23 the shared service people were repointed
24 to ResCap for our areas.

25 Q. So it's your understanding that

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Mr. Cancelliere prepared the information
in this chart for delivery to the board?

A. Again, I know that Jeff worked
on this type of information. I don't know
that he actually created this chart.

Q. And to the extent there's any
information in this chart that
Mr. Cancelliere provided, that was
misleading or mistaken, you would take
responsibility for his work in that
regard, correct?

MR. RAINS: Objection. Assumes
facts not in evidence. Calls for
speculation.

Q. You can answer.

MR. RAINS: You can still
answer.

A. You know -- you know, we have
employees that work for all of us that
ultimately the buck stops with me.

Q. Which means that if
Mr. Cancelliere put information in to this
document that was provided to the board,
information that was either misleading or

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2 and who provided them is -- is important
3 and a consideration but it's -- it's just
4 a consideration. Whether it came from
5 Kathy or -- or Jeff, you know, it's a data
6 point.

7 Q. Was it important for the board
8 to determine whether or not these
9 35 percent, 36 percent defect rates were
10 valid?

11 MR. RAINS: Objection. Calls
12 for speculation.

13 Q. Let me withdraw that. Was it
14 important for the board to determine where
15 the 35 percent and 36 percent defect rates
16 came from and how they were arrived at?

17 MR. RAINS: Objection. Calls
18 for speculation. Calls for a legal
19 conclusion.

20 You can still answer.

21 A. Yeah, I don't know how to answer
22 it any different. That when you consider
23 a settlement and you consider all the
24 facts and circumstances and things that
25 are presented, everything is a data point

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2 and it goes into the overall
3 consideration. So --

4 Q. Right.

5 A. -- I don't know how to answer
6 your question any different than I've
7 answered it.

8 Q. So it wasn't important to you
9 where the 35 percent and 36 percent came
10 from, it was just important to you that it
11 was there?

12 MR. RAINS: Objection. That
13 misstates his testimony. Go ahead.

14 A. I don't know how to answer the
15 question any different.

16 Q. During the May 9th board meeting
17 did you know that before the meeting your
18 direct report Mr. Cancelliere told Mr. Lee
19 that he had challenged certain of
20 Ms. Patrick's assumptions concerning
21 defect rates, including the validity of
22 using the 36 percent defect rate for Bank
23 of America that's in Exhibit 60?

24 MR. RAINS: Objection. Assumes
25 facts not in evidence.

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2 Go ahead.

3 A. Can you re- -- rephrase the
4 question? I'm sorry.

5 Q. That's okay. During the May 9th
6 board meeting did you know that before the
7 meeting Mr. Cancelliere told Mr. Lee that
8 he had challenged certain of Ms. Patrick's
9 assumptions about defect rates including
10 the validity of using a 36 percent defect
11 rate for Bank of America that's referenced
12 and included in -- in Exhibit 60?

13 MR. RAINS: So object to the
14 question as vague and ambiguous and it
15 also misstates the evidence.

16 A. Okay. So -- so my answer to
17 that is I don't recall at May 9th if I
18 knew if Jeff had conversations as I sit
19 here today. I know that there were
20 conversations with the parties on
21 assumptions that were made throughout the
22 process.

23 Q. On May 9th as a board member of
24 deciding whether or not to approve ResCap
25 entering into this settlement agreement,

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2 would you have liked to know on or before
3 the meeting that Mr. Cancelliere had
4 concerns about the validity of the
5 36 percent defect rate?

6 MR. RAINS: Objection. The form
7 of the question is confusing and it
8 assumes facts not in evidence. The
9 question is would you have liked to
10 have known.

11 A. You know, it would be helpful to
12 know all the conversations that took
13 place.

14 Q. Wouldn't it be particularly
15 important to know that Jeff Cancelliere,
16 your -- your numbers cruncher, who reports
17 directly to you was presenting a 36
18 percent number to the board that he
19 thought perhaps was not the proper number?

20 MR. RAINS: Objection. Assumes
21 facts not in evidence.

22 A. I don't -- I don't know that we
23 didn't talk about that at the board
24 meeting or not. So I -- I just don't
25 recall. But as far as -- and whether or

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2 not it's important to know where the data
3 came from and how -- how people discussed
4 it, those were all good things to -- to --
5 to have information on.

6 Q. And if Jeff had -- Cancelliere
7 had doubts about the 36 percent, you would
8 have -- you would have wanted to know that
9 before you made your decisions on May 9th,
10 right?

11 A. No.

12 MR. RAINS: Again it assumes
13 facts not in evidence.

14 Q. So --

15 A. No. I stated earlier that
16 that's a data point for those pieces. We
17 had, you know, conversations regarding the
18 types of claims that could be brought
19 forth. Our lawyers and our advisors and
20 our numbers people had talked about what
21 types of risk could come from litigation
22 and our advisors told us that this
23 settlement was a good settlement based on
24 all those risks. It wasn't pointed to
25 just saying this Lehman claim amount

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2 defect rate or this BofA baseline defect
3 rate is the most important thing on this
4 page. It's a data point.

5 You know, we have multiple legal
6 entities that our -- our deals were issued
7 off of. These deals were issued in 2004
8 to 2007, some through GMAC Mortgage, some
9 through RFC. I don't know how Lehman did
10 their deals. I don't know how BofA did
11 their -- their deals, their shelves.
12 These are data points we don't know how to
13 process. So these are data points.

14 Q. If Mr. Cancelliere thought the
15 36 percent defect rate was wrong, you
16 would have wanted -- you would have wanted
17 him to tell you that before the board
18 meeting, right?

19 MR. RAINS: Again it misstates
20 the evidence, assumes facts not in
21 evidence. Calls for speculation.

22 Go ahead.

23 MR. SIEGEL: It's a very simple
24 question.

25 A. I don't know if we talked about

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2 that or we didn't talk about it is my
3 first point. If he -- if he challenged
4 it, would I want to know that? Yes.
5 That's fine. I would want to know.

6 Q. But you didn't know that on or
7 before the May 9th board meeting?

8 A. I already answered that that I
9 don't know that we did or didn't.

10 Q. But you have no recollection of
11 that?

12 A. I have no recollection.

13 Q. Was the first time that you
14 learned that the proposed settlement
15 amount was 8.7 billion the time when you
16 received this -- this board material from
17 Mr. Lee?

18 A. Can you repeat the question?

19 Q. Sure. Did you first learn that
20 the proposed settlement amount that's in
21 the RMBS Trust Settlement Agreement was
22 \$8.7 billion when you received Exhibit 60?

23 A. Yes, that -- that -- that's my
24 recollection.

25 Q. And it's your recollection that

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2 when the board received Exhibit 60 that's
3 the first time that the board was informed
4 as a group that the settlement amount, the
5 proposed settlement amount was
6 8.7 billion?

7 A. That's my recollection.

8 Q. Now, as of May 9, 2012, you had
9 never spoken directly with Ms. Patrick, is
10 that true?

11 A. I have never spoken with
12 Ms. Patrick.

13 Q. May I ask you to take a look at
14 Exhibit 61. Those are the board minutes
15 for May 9th.

16 A. Okay.

17 Q. And you recognize those as the
18 final minutes of the ResCap board meeting
19 from May 9, 2012, that began at 3:00?

20 A. Yes.

21 Q. And does Exhibit 61
22 accurately -- accurately reflect what
23 occurred at the meeting?

24 A. Yes. It's an -- an executive
25 summary of the -- of the meeting.

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2 Q. But you've just read the
3 exhibit, correct?

4 A. Yes. I've just read it.

5 Q. And to your understanding is
6 everything in there accurate?

7 A. Yes, I -- I believe it's
8 accurate.

9 Q. Did you participate in this
10 meeting by phone?

11 A. I don't recall. I believe I was
12 in person.

13 Q. And now, the minutes say it was
14 a telephonic meeting.

15 A. Yeah.

16 Q. Does that affect your
17 recollection?

18 A. Well, what I mean by that is I
19 work out of both New York and Fort
20 Washington. And I -- we were having a lot
21 of our board meetings at Morrison &
22 Foerster. And I believe I was present in
23 Morrison & Foerster when we had the
24 meeting.

25 Q. And you were in a conference

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room at Morrison & Foerster?

A. That's my recollection.

Q. And do you recall who else was
in the conference room with you?

A. I don't remember.

Q. Do you recall whether any other
board members were in the conference room
at the time?

A. No. I --

Q. Mr. Marano?

A. I believe Tom would have been
there. Steve would have been there.

Q. When you say Steve you mean
Steve Abreu?

A. Yes.

Q. And is he -- he's not a member
of ResCap's board of directors, is he?

A. No, he is.

Q. You're correct. I was
momentarily confused.

MR. RAINS: He's always correct.

No worries there.

MR. SIEGEL: Depending upon his
testimony that may be true.

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2 Q. And the independent -- do you
3 recall whether any of the independent
4 board members, Mr. Smith, Ms. West,
5 Mr. Mack or Mr. Ilany were at MoFo during
6 the board meeting?

7 A. I don't recall.

8 Q. Your best recollection is that
9 to the extent they participated, they
10 par- -- those independent board members
11 participated by phone?

12 MR. RAINS: Objection.

13 Misstates his testimony.

14 A. You know, we had -- you know, we
15 have had so many meetings and oftentimes
16 they are there. Oftentimes people
17 participate by phone, depending on where
18 they are at. I just don't -- don't
19 recall.

20 Q. During the portion of the board
21 meeting that was dedicated to discussing
22 the RMBS Trust Settlement, did you speak
23 at all?

24 A. I don't -- I don't recall. I
25 speak out, you know, in almost every board

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2 meeting asking questions so I would
3 presume that I did.

4 Q. But you don't recall saying
5 anything during that portion of the
6 meeting, right?

7 A. Nothing -- I don't recall.

8 Q. Do you recall whether -- whether
9 the call started promptly or the meeting
10 started promptly at 3:00 or whether it was
11 delayed?

12 A. I don't recall.

13 Q. Okay. And the meeting lasted
14 for about an hour and adjourned at 4:00;
15 is that right?

16 A. The minutes indicate it
17 adjourned at 4:00 p.m.

18 Q. Did you have any understanding
19 at the time why Mr. Ilany was unable to
20 attend the meeting?

21 A. I don't recall.

22 Q. Do you recall whether any of the
23 other three independent directors,
24 Mr. Smith, Ms. West and Mr. Mack, were
25 actually on a telephone conference call

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2 with the rest of the board members during
3 the board meeting?

4 A. I don't -- I don't recall. As I
5 said, there's -- there's -- we have had so
6 many meetings and oftentimes people are in
7 person, oftentimes people participate by
8 phone.

9 Q. And so you don't -- so you don't
10 know whether any of those three
11 independent board members actually
12 participated by phone for any or part of
13 the meeting?

14 A. Yeah, again, I don't -- I don't
15 recall.

16 Q. And it's at this meeting that
17 the board approved entering into the RMBS
18 Settlement Trust Agreement, correct?

19 A. Yes. With -- with -- subject to
20 counsel making some changes.

21 Q. Do you know what those changes
22 were?

23 A. I -- you know, I think there
24 were still some finer points being worked
25 out that were delegated to the ResCap

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2 management with the advice and legal
3 counsel. I -- I can't recall specifically
4 which -- which ones they were.

5 Q. The board resolved that if any
6 of those changes would be material, that
7 they would have to be brought back before
8 the board for the board's approval?

9 A. Yes.

10 THE WITNESS: Can we take a
11 break?

12 MR. SIEGEL: Oh, yeah. Sure.

13 THE VIDEOGRAPHER: The time is
14 10:30 a.m. and we are off the record.

15 (Whereupon, there is a recess in
16 the proceeding.)

17 THE VIDEOGRAPHER: The time is
18 10:42 a.m. We are back record.

19 (Whereupon, there is a recess in
20 the proceedings.)

21 THE VIDEOGRAPHER: The time is
22 10:42 a.m. We are back on the record.

23 Q. Welcome back, Mr. Whitlinger.
24 Right before the break you testified that
25 at the May 9th board meeting the board

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2 Q. But you don't have a specific
3 recollection of discussing the board's
4 fiduciary duties during the half an hour
5 or so that the board discussed the
6 settlement agreement on May 9th?

7 A. Yeah, I -- I don't recall
8 specific to that.

9 Q. And on May 9th as a board member
10 when you were considering the settlement,
11 in your own words what was your
12 understanding of your fiduciary duty as a
13 ResCap board member in deciding whether to
14 approve the settlement agreement?

15 A. Generally speaking, you know, as
16 a director we have a duty of care and duty
17 of loyalty to ResCap and all its
18 affiliates or subsidiaries. And we needed
19 to consider all creditors when making any
20 decision that we would make at all, you
21 know, that that's part of that -- that
22 process. So.

23 Q. So you understood on May 9th
24 that you had a fiduciary duty of care and
25 loyalty -- loyalty to ResCap and all of

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its creditors during that meeting?

A. Yes. And to ResCap's subsidiaries.

Q. Just to be clear, your answer to the question was "Yes. And to ResCap's subsidiaries"?

A. Yes.

Q. And did that fiduciary duty extend to the creditors of not just ResCap but also ResCap's subsidiaries?

A. Yes.

Q. If a conflict arose during the May 9th board meeting between the best interests of ResCap's different subsidiaries or the different creditors of those different subsidiaries, what was your understanding of how the board was supposed to resolve that conflict?

MR. RAINS: I object to the question on the grounds that it's a hypothetical and it assumes facts not in evidence and so it will cause you to speculate.

If you can answer the question,

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2 go ahead.

3 A. Can you say it one more time?

4 Q. Sure.

5 MR. SIEGEL: Let me withdraw the
6 question. I'm going to ask you a
7 different question.

8 Q. During the May 9th board meeting
9 did you or anybody on the board determine
10 or discuss whether the settlement
11 agreement was in your view in the best
12 interests of not only the creditors of
13 ResCap but also the creditors -- creditors
14 of each of ResCap's subsidiaries?

15 A. I don't recall specific
16 conversation. But again, you know, we've
17 had many discussions and presentations
18 about our fiduciary responsibility for all
19 the subsidiaries of ResCap.

20 Q. If the settlement agreement that
21 you were considering on May 9th caused a
22 conflict between the interests of the
23 creditors of one ResCap subsidiary and
24 another ResCap subsidiary, how would you
25 as a board member, what's your

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understanding of how that conflict would
be resolved?

MR. RAINS: The question assumes
facts not in evidence. It's a
hypothetical question so it calls for
the witness to speculate.

A. You know, if there was perceived
conflict of interest we'd have discussion
about it and talk to -- talk to counsel.

Q. And you don't recall any such
discussion about that during the May 9th
board meeting, right?

A. Yes. As I said, I don't recall
having a specific conversation about it.

Q. On or before May 9th did you
read or review a copy of the RMBS Trust
Settlement Agreement?

A. On or before May 9th?

Q. Uh-hum.

A. I don't -- I don't recall.

Q. Do you recall ever reading or
reviewing it before the petition date?

A. I believe I did.

Q. But it's possible that as of

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May 9th when you participated in this board meeting you might not have actually read the trust settlement agreement?

A. I don't recall.

Q. Is your answer the same with respect to the plan support agreement between ResCap and the institutional investors?

A. Yeah, I don't -- I don't recall specifically what date I read this.

Q. But it's possible that you might not have read that plan support agreement as of May 9th, correct?

A. I -- I don't -- it's possible. I don't recall.

Q. Do you recall whether during the May 9th board meeting, whether any board member asked to -- asked for a copy of the RMBS settlement agreement before the board was to vote on approving ResCap entering into that agreement?

A. I don't recall.

Q. Is it your understanding that on May 9th the board was presented with and

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2 the board considered all material
3 information about the terms of the RM --
4 RMBS Trust Settlement Agreement?

5 A. Yes, the board -- the board
6 discussed, you know, the -- the terms of
7 the settlement.

8 Q. And to the best of your
9 recollection on May 9th what were all the
10 material terms in your mind as a board
11 member, what were all the material terms
12 of the settlement agreement?

13 MR. RAINS: You are asking him
14 to do this by memory?

15 MR. SIEGEL: I'm asking if he
16 recalls what he viewed on May 9th to
17 be all the material terms of the
18 settlement agreement.

19 MR. RAINS: Then you might want
20 to show him the document. Okay.

21 So do it by memory, that's fine.
22 As best you can.

23 A. So it's hard to put myself back
24 on May 9th but clearly knowing the amount
25 of the allowed claim was important.

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those securitizations. And then we have our litigation team and lawyers negotiating.

Q. What analysis of the potential losses that you just discussed did the board consider on May 9th?

A. We went through the -- the page that showed the potential losses in the deal.

Q. Was that Exhibit 60?

A. That's Exhibit 60.

Q. Where -- where does -- where does Exhibit 60 show potential losses in the deal?

A. B5, estimated lifetime loss, 44 billion.

Q. Turning back to Exhibit 61. On the first page in the second-to-last paragraph.

MR. RAINS: Sorry to look over your shoulder.

Q. Do you see where it states, "During the discussion Mr. Marano requested that a report with separate line

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2 items identifying the different settlement
3 amounts be prepared to provide the board
4 with additional details on the
5 settlements."

6 Did I read that correctly?

7 A. Yes.

8 Q. When Mr. Marano made that
9 request, did you have an understanding as
10 to what he was requesting?

11 A. I don't recall exactly what the
12 different settlement amounts with the
13 additional details on the settlements at
14 that time were.

15 Q. As you are sitting here right
16 now and reading that, what is your best
17 understanding as to what that means?

18 A. At that point in time, you know,
19 showing what -- what the AFI settlement
20 would be and the dollar amounts associated
21 with that and likely what the agreements
22 that had been negotiated up to that point
23 in time with other parties for the JSBs.
24 So those would probably be some of them.

25 Q. Does -- does the chart on

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2 Exhibit 60 disclose to the board the
3 amount of the settlement between Bank of
4 America and institutional investors that
5 were represented by Kathy Patrick?

6 A. This page?

7 Q. Yes.

8 A. And what was the question again?

9 MR. SIEGEL: Just for the
10 record, we are referring to the page
11 of Exhibit 60 with the Bates number
12 that ends in 93182.

13 Q. And the question was, does the
14 chart on that page disclose to the board
15 the amount of Bank of America's settlement
16 with institutional investors who were
17 represented by Ms. Patrick?

18 A. It -- the -- you know, the
19 report is what the report is. It has
20 ResCap settlement and then it has a Lehman
21 claim amount and a BofA baseline defect
22 rates that are noted.

23 Q. But it doesn't disclose the
24 amount that Ms. Patrick and her client
25 settled with Bank of America, correct?

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2 A. I don't see that.

3 Q. And that information was not
4 disclosed to the board during the May 9th
5 meeting, correct?

6 A. Again, I don't -- I don't recall
7 all the points that were discussed on
8 that.

9 Q. Now during the meeting did the
10 board receive the report that Mr. Marano
11 requested before the board decided to
12 approve the settlement?

13 A. So which settlement are you
14 referring to?

15 Q. I'm referring to on Exhibit 61
16 Mr. Marano requested a report, right?

17 A. Mr. Marano requested that a
18 report that separates line items
19 identifying different settlements but I
20 don't know which -- you know, are you
21 talking about the RMBS trust settlement?

22 Q. I'm asking -- I'll -- I'll try
23 to state the question more clearly.

24 Before this meeting adjourned at
25 4:00 was the board provided with the

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2 report that Mr. Marano requested?

3 A. I don't -- I don't know. I
4 don't recall. I wouldn't believe so
5 though.

6 Q. Do you recall whether anybody
7 asked to adjourn the meeting or defer the
8 board's decision until that information
9 was provided to the board?

10 A. I don't really understand the
11 thought process on the question. This
12 relates to waterfall analyses. It doesn't
13 relate to the RMBS agreement.

14 Q. But isn't that under the section
15 of the board minutes that's entitled
16 Proposed Legal Settlement?

17 A. You know, the proposed legal
18 settlement was the PLS. This -- this
19 Mr. Renzi discussing was talking about the
20 waterfall.

21 Q. Well, you see on the first
22 page -- withdrawn.

23 You agree that the board meeting
24 covered two agenda items, right, one was
25 the proposed legal settlement and that was

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JAMES WHITLINGER

the RMBS Trust Settlement Agreement,
right?

A. Yes.

Q. Okay. And then on the second
page you see that there was a project
bounce update?

A. Yes.

Q. And is that the second agenda
item for the meeting?

A. Yes.

Q. So everything that's under the
section that's Proposed Legal Settlement
obviously concerns the RMBS Trust
Settlement Agreement, right?

A. No.

MR. RAINS: Assumes facts not in
evidence.

Go ahead.

A. No.

Q. You testified before that
everything in here is accurate, correct?

A. My statements in here are
accurate, yes.

Q. And isn't it true that

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2 that accept and determine what portion of
3 claims they would get.

4 Q. Do you know how the expert will
5 make that determination of what portion of
6 the claim will be allocated?

7 MR. RAINS: Objection. The
8 document speaks for itself.

9 A. I mean, you know, the document
10 lays out in some of these buckets how --
11 how to actually determine who is accepting
12 and then how the -- the claim will be
13 calculated.

14 Q. Your understanding is just based
15 on what's in the document?

16 A. Yeah. I -- I -- that's my
17 understanding.

18 Q. You can set that exhibit aside
19 for a second. I'm going to ask you to
20 turn your attention back to Exhibit 60.
21 That's the board material that was
22 provided to the board for the May 9th
23 meeting. And if you could take a look
24 again at the chart in Exhibit 60. What is
25 your understanding of footnote 6 which

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2 states there could be amounts conceded if
3 the true defect rate is below the
4 19.72 percent based on actual loan file
5 reviews and application of litigation
6 defenses?

7 A. I don't recollect what that
8 related to.

9 Q. Doesn't that mean that the
10 19.72 percent defect rate here is not the
11 true defect rate because its not based on
12 an actual loan file review and it doesn't
13 consider litigation defenses against
14 claims that purportedly could be brought
15 by the institutional investors?

16 MR. RAINS: Objection. Asked
17 and answered. Calls for speculation.

18 A. Can you rephrase?

19 Q. Was there something you didn't
20 understand?

21 A. Yeah. I didn't -- I'm not able
22 to get the full gist of what you are
23 asking.

24 Q. Doesn't footnote 6 mean that the
25 19.72 percent is not the true defect rate

1 JAMES WHITLINGER

2 because it's not based on an actual loan
3 file review and it's not based on an
4 application of litigation defenses?

5 MR. RAINS: Objection. Calls
6 for speculation.

7 A. Yeah. I stated earlier that the
8 8.7 and that 19.72 is a calculation of
9 8.7 divided by 44. And so application of
10 litigation defenses, you know, again that
11 would have been all considered as part of
12 what our professionals determined in
13 negotiating and coming up with
14 \$8.7 billion.

15 Q. Was it your understanding on
16 May 9th that the 19.72 percent number
17 reflected the application of litigation
18 defenses?

19 A. I don't know how to answer it
20 different than I have answered it before
21 that the 8.7 is, you know, the 19.72
22 relates to the loss -- the lifetime loss
23 dollars. And the 8.7 divided by that
24 number is 19.72 and yes, that considers
25 litigation defenses, what claims could be

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2 brought by the other parties, how to
3 consider them and probabilities of
4 winning/losing in court where somebody
5 else decides -- you know, my understanding
6 was there wasn't going to be an actual
7 loan file review because the, that's what
8 a settlement is for.

9 Q. Would an actual loan file review
10 give you a more accurate understanding of
11 what the proper defect rate would be for
12 the loans in the Kathy Patrick group?

13 A. You know, I would defer to
14 our -- our lawyers on that. My business
15 opinion would be, you know, when you look
16 at actual loan files and you have a party
17 on both sides, nobody is ever going to
18 agree on what was a defect rate. One side
19 is going to say it's a defect. The other
20 side is going to say it's not a defect.
21 And they are going to argue, argue, argue,
22 argue. That's the whole point of
23 settling.

24 Q. So is it your testimony that the
25 19.72 percent defect rate in Exhibit 60

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JAMES WHITLINGER

takes into consideration the litigation
defenses and the other litigation issues
that you just testified about?

MR. RAINS: Objection. Asked
and answered.

A. Again, I don't know how to
answer your question any differently than
I have -- I have answered before.

Q. Did the board consider or get
any information about the specific
litigation defenses against these rep and
warranty claims?

A. I -- I don't recall.

Q. Do you recall whether or not the
board was given any information about
whether or not there were any statutes of
limitation that might bar some of
Ms. Patrick's clients purported claims?

A. If -- if you're -- are you
asking me in this -- in the May 9th, if we
talked about statute of limitations, I
don't recall. I know that we have always
talked about statute of limitations when
talking about rep and warrant claims.

1 JAMES WHITLINGER

2 Q. But you had no recollection of a
3 discussion about statute of limitations
4 during the May 9th meeting?

5 A. I don't recall.

6 Q. Is it your understanding that
7 just because there's a loss associated
8 with the mortgage that is considered a
9 defect but that doesn't necessarily mean
10 that ResCap or its affiliates are liable
11 for any or all of the loss?

12 A. Since you used the word "liable"
13 I'm going to again defer to our -- our
14 counsel. Lawyers determine liability.

15 Q. So was it your understanding on
16 May 9th -- withdrawn.

17 Did anyone provide the board on
18 May 9th with an analysis of how much it
19 might cost to litigate the claims
20 Ms. Patrick was -- was asserting as
21 compared to settling the claims around May
22 of 2012?

23 A. Can you repeat the first part of
24 the question?

25 Q. Sure. Did anyone advise or

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JAMES WHITLINGER

discuss with the board on May 9th or
provide an analysis of how much it might
cost to litigate the claims being asserted
by Ms. Patrick rather than settling in
May 2012?

A. I -- I don't -- the reason I
ask, I don't recall if it was discussed
but I know for sure I don't recollect
seeing a litigation presentation analysis
embedded in this -- this -- this list of
materials.

Q. You agree it would have been
helpful for the board to know on May 9th
what counsel estimated or anticipated it
might cost to litigate the claims as
compared to settling them in the
settlement agreement?

A. You know, again, that would be a
data point. And I relied on our
professionals and our legal teams in
litigation in how those matters evolve.
So I think that's a data point, how much
would it cost, how many loan files if I
was going to review it. Again, I -- I

1 JAMES WHITLINGER

2 Q. -- as a result of a settlement?

3 MR. RAINS: Objection. Asked
4 and answered.

5 A. I don't recall. As I stated, I
6 don't have an analysis that I -- that I
7 know was presented on May 9th.

8 Q. On May 9th did you know whether
9 or not any of Ms. Patrick's clients had
10 filed any rep and warranty claims against
11 ResCap or any of its affiliates?

12 A. Can you repeat the question
13 again?

14 Q. On May 9th did you know whether
15 or not any of Ms. Patrick's clients, the
16 institutional investors or the trusts had
17 actually filed any rep and warranty claims
18 or other claims against ResCap or its
19 affiliates?

20 A. I don't know for sure. We
21 obviously had multiple rep and warrant
22 claim -- claims outstanding. So I presume
23 that some of them would have been part of
24 that Kathy Patrick group.

25 Q. When -- when you say that there

1 JAMES WHITLINGER

2 are obviously multiple rep and warranty
3 claims outstanding, you mean claims that
4 have actually been filed or filed against
5 ResCap, litigations that have been filed
6 against ResCap or its affiliates?

7 A. I'm sorry. I was referring to a
8 request for a repurchase. So a repurchase
9 request claim was made to the company in
10 following our business process to evaluate
11 the claim.

12 Q. So you believe that some of the
13 claims you just described would have been
14 part of the Kathy Patrick group, correct?

15 A. Yeah. I believe it's -- it's
16 certainly possible that some of those
17 investors would have to be the same
18 investors that are bringing forth claims
19 of specific loan rep and warrant requests.

20 Q. Do you know if any of those
21 claims to which you just referred also
22 resulted in any litigation being filed
23 against ResCap or any of its affiliates?

24 A. I don't know for sure. I know
25 we've had -- we have multiple cases filed.

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2 I'd have to talk to counsel.

3 Q. During the May 9th board meeting
4 did the board discuss that the settlement
5 agreement would provide for ResCap to pay
6 Ms. Patrick's legal fees?

7 A. I don't recall discussing that
8 component specifically but ResCap, my
9 understanding on the contract is that
10 those legal fees would be deducted from
11 the overall \$8.7 billion amount.

12 Q. You say the contract, you mean
13 the settlement agreement?

14 A. Yeah. The RMBS Trust Settlement
15 Agreement.

16 Q. But the board didn't discuss
17 this on May 9th and --

18 A. I don't know if we did or
19 didn't. It didn't really matter to me
20 because it's -- yeah, that was between her
21 and the institutional investors. The
22 8.7 billion is their allowed claim. And
23 so if it's deducted from that I'm
24 indifferent on how the agreement that she
25 may have reached or not reached with the

1 JAMES WHITLINGER

2 institutional investors.

3 Q. Would it have been more
4 reasonable and fair to the creditors of
5 ResCap and its affiliates for the
6 \$8.7 billion amount to be reduced by the
7 amount of Ms. Patrick's fees --
8 Ms. Patrick's fees?

9 MR. RAINS: Objection. Vague
10 and ambiguous. Calls for speculation.

11 A. I have already told you that as
12 a board member in and the process that was
13 followed I'm comfortable with the
14 \$8.7 billion. I don't have an opinion on
15 how the institutional investors and Kathy
16 Patrick negotiated, what portion she
17 should get. My view as a board member was
18 that is the 8.7 billion reasonable for the
19 claims that could be brought, the
20 litigation issues and -- and that's what I
21 relied on.

22 Q. Were you aware during the
23 May 9th board meeting that the RMBS Trust
24 Settlement Agreement provided releases to
25 inside directors like yourself and not to

1 JAMES WHITLINGER

2 the independent directors?

3 A. Can you repeat that, please?

4 Q. Yeah. Were you aware during the
5 May 9th board meeting that the settlement
6 agreement provided releases to management
7 directors like yourself and Mr. Abreu and
8 Mr. Marano but not to the other board
9 members who were considered independent
10 directors?

11 A. I don't recall that.

12 Q. You didn't know that on May 9th?

13 A. I don't know if I did or didn't.

14 Q. Is that -- is that information
15 something that you think the board
16 members, including yourself, would want to
17 know and consider in making this decision
18 on May 9th?

19 MR. RAINS: Objection. Assumes
20 facts not in evidence. Calls for
21 speculation.

22 A. Again, it's another component of
23 when our lawyers talked to us about the
24 releases and the types of claims, and what
25 they considered and how they thought about

1 JAMES WHITLINGER

2 them and the probabilities of court
3 outcomes and whatnot -- probabilities of
4 outcome of the case, how that would work.
5 And so I think that's another
6 consideration.

7 Q. Did the GMAC Mortgage LLC board
8 meet separately to approve the RMBS Trust
9 Settlement Agreement?

10 A. I don't believe so.

11 Q. Do you agree that Ally Bank
12 underwrote a significant percentage of the
13 loans giving rise to the rep and warranty
14 and PLS claims against ResCap?

15 A. I agree that Ally Bank
16 underwrote loans that were subsequently
17 sold to GMAC Mortgage and potentially RFC,
18 that were subsequently part of a
19 securitization.

20 Q. So do you disagree that Ally
21 bank underwrote a significant percentage
22 of the loans that give rise to the rep and
23 warranty claims against ResCap?

24 MR. RAINS: Objection. Asked
25 and answered. Misstates his

1 JAMES WHITLINGER

2 you earlier was the process for how Ally
3 reported information as well. Same
4 process.

5 Q. And were you responsible as CFO
6 of mortgage operations for AFI for
7 overseeing that process?

8 A. I -- no. The -- the governing
9 committee had ultimate -- no one person is
10 allowed to control a process. That's why
11 we have a governance committee. So I am a
12 piece of a governance component.

13 Q. How did you prepare for your
14 deposition today?

15 A. I met with my counsel here and I
16 reviewed a -- the RMBS Trust Settlement
17 Agreement, reviewed my first day
18 affidavit. Took a look at our, you know,
19 accounting policy memos.

20 Q. When you met with your counsel
21 to prepare for the deposition, was anybody
22 present on behalf of Ally or Ally Bank?

23 A. No.

24 Q. Did you review any of the
25 deposition transcripts from this matter in

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2 including Mr. Marano and Mr. Mack?

3 A. No.

4 Q. Before your deposition today did
5 you discuss with anyone what anyone else
6 had testified to in depositions in this
7 matter, including testimony by Mr. Marano
8 or Mr. Mack or Mr. Cancelliere?

9 A. No.

10 MR. SIEGEL: Let's take a break.

11 MR. RAINS: All right.

12 THE VIDEOGRAPHER: The time is
13 12:57 p.m. and we are off the record.

14 (Whereupon, there is a recess in
15 the proceedings.)

16 THE VIDEOGRAPHER: The time is
17 1:08 p.m. and we are back on the
18 record.

19 EXAMINATION BY

20 MR. DENMAN:

21 Q. Mr. Whitlinger, I'm Harrison
22 Denman from White & Case for the ad hoc
23 group of junior secured noteholders.
24 Earlier you mentioned you are both an
25 officer and a director for Residential

1 JAMES WHITLINGER

2 Capital LLC and for GMAC Mortgage LLC,
3 correct?

4 A. Yes.

5 Q. And do you also hold positions
6 at Residential Funding Company, LLC?

7 A. Residential Funding I'm also a
8 board member and a chief financial officer
9 as Craig had asked.

10 Q. Okay. And can you identify the
11 other members of the board for GMAC
12 Mortgage?

13 A. Steve Abreu and, you know, Joe
14 Pensabene, who is the head of our
15 servicing is currently a -- and is also a
16 board member.

17 Q. And is the same individuals that
18 are members of the board of Residential
19 Funding Company?

20 A. I believe it's only Steve Abreu
21 and myself for -- for RFC.

22 Q. And earlier you said that you
23 don't recall there being any meetings of
24 the board of GMAC Mortgage with respect to
25 the RMBS settlement, correct?

1 JAMES WHITLINGER

2 A. Correct.

3 Q. And do you recall if there were
4 any such meetings of the board by -- of
5 the board for Residential Funding Company?

6 A. No. I would say the same, I
7 don't recall.

8 Q. Being that you are one of only
9 two, or in the case of GMAC Mortgage
10 three, directors for each entity you would
11 obviously -- your attendance would be
12 necessary for any board meeting of those
13 two entities, correct?

14 A. Yes.

15 Q. So it's safe to assume that your
16 not recalling means that those meetings
17 never occurred?

18 MR. RAINS: Objection.

19 Misstates his testimony.

20 A. I don't -- I don't recall having
21 a meeting and I don't believe we had a
22 separate meeting but I don't -- I don't
23 re- -- I don't recall.

24 Q. Okay. Now, you attended the
25 May 9th board meeting, correct?

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2 A. Yes.

3 Q. And that was a board meeting for
4 Residential Capital LLC, correct?

5 A. Yes.

6 Q. And your attendance there was in
7 your capacity as officer and director of
8 Residential Capital LLC, correct?

9 A. Yes. But I was also there with
10 respect to the plan support agreement that
11 all the debtor entities were listed as
12 part of the plan support agreement. So --
13 so I was also considering the other
14 entities in my decision.

15 Q. But only with respect to the
16 plan support agreement because that was
17 the agreement to which those entities were
18 parties?

19 A. That's -- that's correct.

20 Q. Was it customary for you to
21 attend a board meeting for one entity and
22 make decisions that related to the affairs
23 of another entity at that meeting?

24 A. I would say this, you know,
25 generally speaking, because RFC and GMAC

1 JAMES WHITLINGER

2 Mortgage are guarantors to many of the
3 facilities that we have that we're --
4 we're always thinking about all the -- the
5 entities that are -- that are subsidiaries
6 of the company.

7 Q. So do those subsidiary entities
8 ever have board meetings?

9 A. We do -- we do occasionally have
10 board meetings, you know, that -- that,
11 you know, that I would generalize as
12 things that are specific to that entity
13 for maybe a state licensing issue.

14 Q. Okay. Earlier you mentioned
15 that the \$8.7 billion allowed claim --
16 well, let me put it different.

17 What was your understanding with
18 respect to the entities that would be
19 liable for the \$8.7 billion claim as of
20 the May 9th?

21 A. My understanding that at that
22 point in time all the entities were part
23 of the release and that the claim,
24 generally speaking, would be allocated
25 based on where the loans were at by the